

# DEMYSTIFYING P3

## A REVIEW OF ESSENTIAL PUBLIC-PRIVATE PARTNERSHIP CONCEPTS

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# Today's Speakers



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Devin represents issuer, underwriter and private sponsor clients in some of the most complex and innovative transactions in the municipal market.

Such transactions have involved both long- and short-term, fixed and variable rate obligations, public-private partnerships (P3s), commercial paper, swaps, credit and liquidity enhancement, and revenue bonds for natural gas and electrical capacity, as well as a number of sizable special purpose financings. Devin's practice includes representing clients in water, wastewater, transportation, public power, pollution control and other infrastructure financings. Devin has also represented multiple clients in connection with chapter 9 bankruptcies, restructurings and other workouts.



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Chas primarily focuses his practice on municipal finance tax and nonprofit corporation tax matters. He also has legal expertise relating to both charter schools and the federal income tax classification of governmental and quasi-governmental entities. He has consulted on thousands of tax-exempt, build America and tax credit bond issues and has developed deep expertise in almost every tax aspect of municipal finance. Private activity bonds for multifamily housing, solid waste, charter schools and independent schools are areas of particular focus in his practice, as are higher education, short-term and long-term working capital and the various forms of pooled financings. Chas also has advised numerous clients experiencing financial distress or bankruptcy in tax matters relating to their municipal bonds.



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With over 30 years of experience, Richard is widely recognized as one of the nation's foremost authorities, having broad experience with tax exempt financings and related transactions involving governmental and not-for-profit entities. His expertise and stature in the public finance community was recognized by the National Association of Bond Lawyers' highest award for his career of distinguished service in public finance.

Richard focuses on new products, including the development of new and creative financing techniques for governments, non-profits and investment bankers. He regularly works on transactions throughout the country and has worked on the tax aspects of several of the largest and most complex public private partnership (P3) transactions in recent years



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Vincent is an infrastructure partner, with more than 25 years of experience working on projects in the United States and Latin America.

He regularly advises developers, financing parties, (banks, note purchasers and underwriters), governmental authorities in Public Private Partnerships (PPP/P3), and developers and lenders in all types of other project financings. Vincent's practice covers all aspect of infrastructure and energy including roads, airports, water facilities, social infrastructure and wind farms.



# Introduction

The purpose of this webinar is to provide a general overview of public-private-partnership (P3) transactions

- Explore the intersection between traditional public finance and P3s
- Examine some common elements of P3 transactions, including risk allocation concepts
- Review examples of P3 financing structures, including revenue risk transactions and availability payment transactions
- Note certain challenges, including authorization and implementation issues, that can arise in connection with P3s



## What Is a P3?

Starting from the infrastructure development *status quo*, how do P3s differ?

- Public infrastructure project/system development historically design/bid/build with bond financing or pay-go expenditure
- P3 involves a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party invests equity and/or bears significant project/service delivery responsibility, with compensation dependent in part upon successful delivery of the project or service
- Public agency typically retains ownership or control of enterprise, project/facilities and/or output

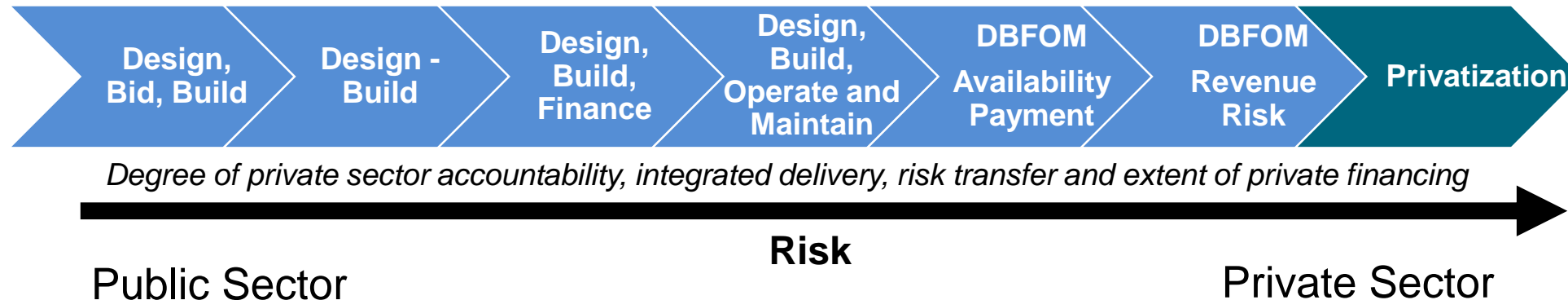


# Risk Transfer

- A key element of P3s is the ability to allocate risk and responsibility to the party best able to manage it through contractual means
- This means that the obligations related to design, construction and long-term operations and maintenance of a project are often transferred on a “back to back” basis
- Includes fixed-term, fixed-price, turnkey contracts
- Alternative Technical Concepts / Alternative Financing Concepts
- Technical solution plays a key part in the financing of the project and investors’ perceived risk
- Contractors are often required to provide a ‘security package’ providing some protection against delays or larger scale failures (e.g., default), and beneficiaries may be governmental agencies or private sponsor or financing parties

## P3: More than DBFOM

- Design, Build, Finance, Operate, Maintain (DBFOM):
  - P3 projects may involve some or all elements
  - Not full privatization



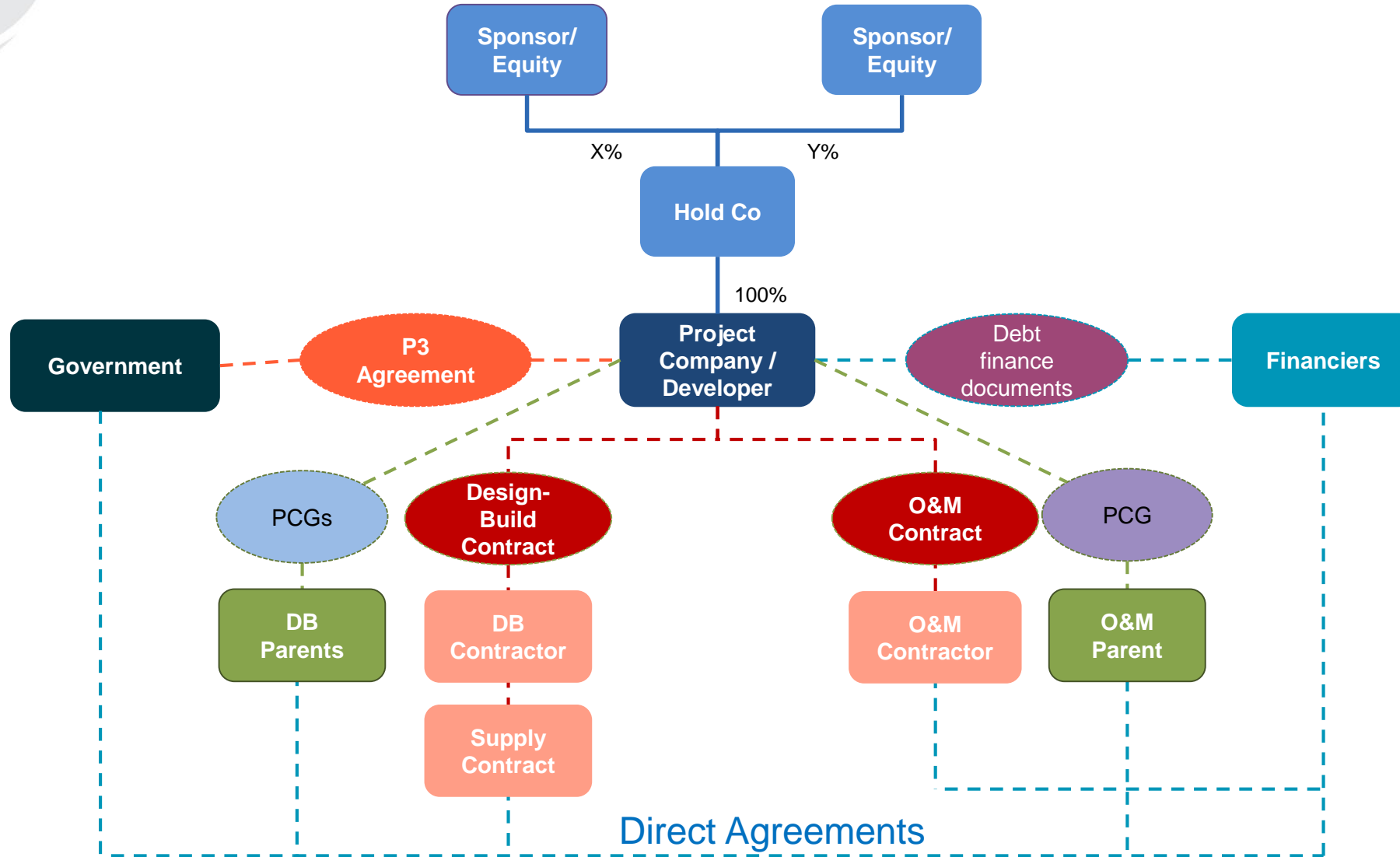


# Fundamental Contracts

Contractual arrangement for infrastructure project/service delivery over time include:

- Concession Agreement/Lease
- Design-Build back-to-back contract and parent guaranty
- O&M back-to-back contract (management contracts) and parent guaranty
- Implementation Agreement (tax-exempt structure)
- Equity Contribution Agreement and letters of credit backstop (sub-debt in tax-exempt structure)
- Payment/Performance Bonds and Letter of Credit for performance security
- Direct Agreements (e.g., with governmental authority for cure and substitution)
- Supply Contracts (e.g., rolling stock)

# Example Full P3 Transaction Structure







# Goals of P3s

- Some of the stated goals of P3 infrastructure project/service delivery include:
  - Providing access to private sector design, engineering, construction and operating expertise and tools for managing certain project delivery risks
  - Availability of additional sources of capital and financing options
  - Lifecycle cost savings and level of service/good repair guarantees



## P3 Partnership Challenges

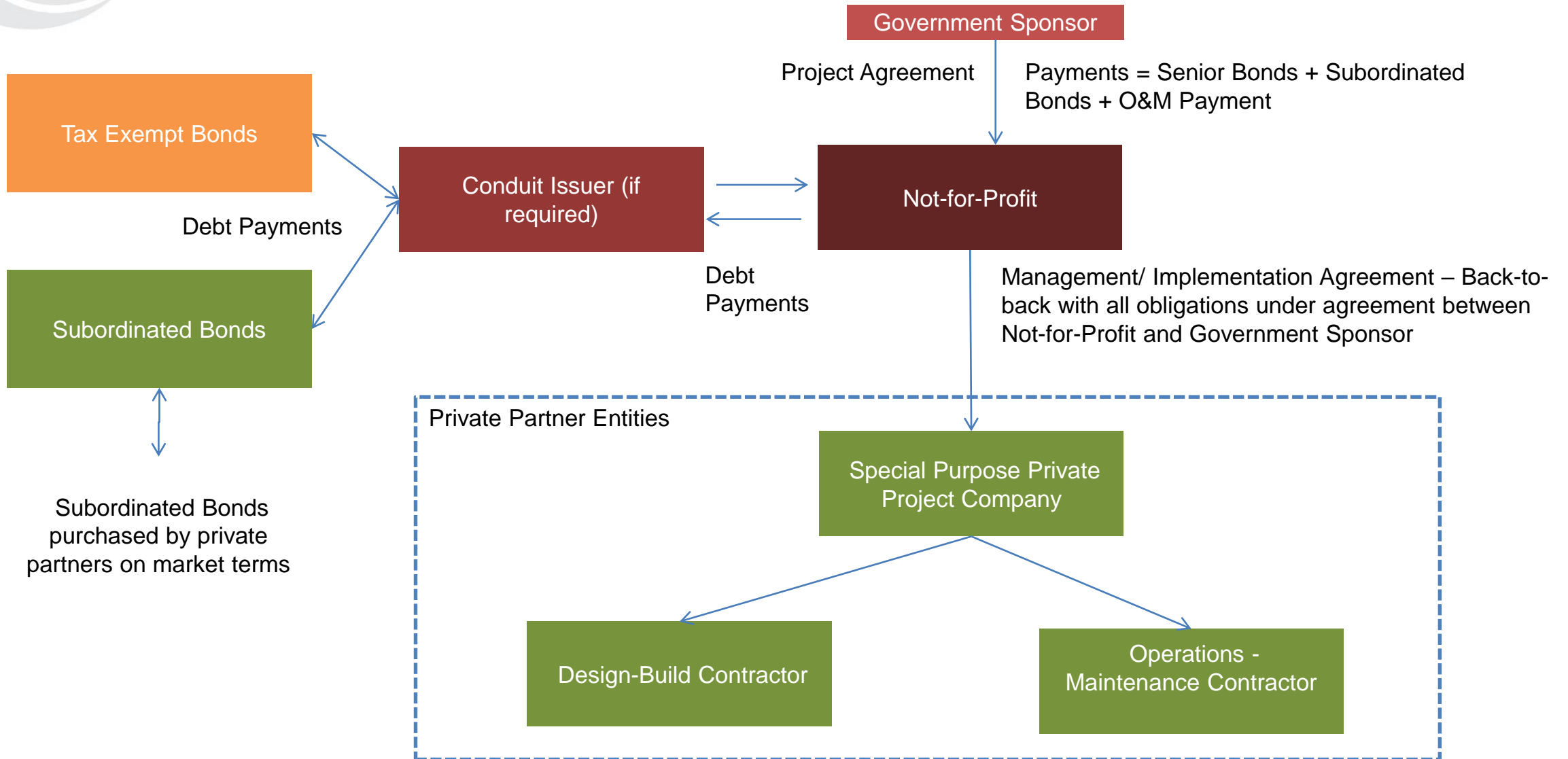
- Some issues typically arising at the outset:
  - Defining the governmental authority's infrastructure and service goals
  - Stakeholders
  - Environmental approvals (federal?); utilities; other third party interference
  - Funding sources (TIFIA/PABs/tax exempt financing); budget; milestone payments
  - Schedule
  - Market testing/RFI/RFQ/RFP
  - Statutory authority and legal landscape
  - Interface risk
  - Attracting construction companies, equity and financing parties (are the risks property allocated?)



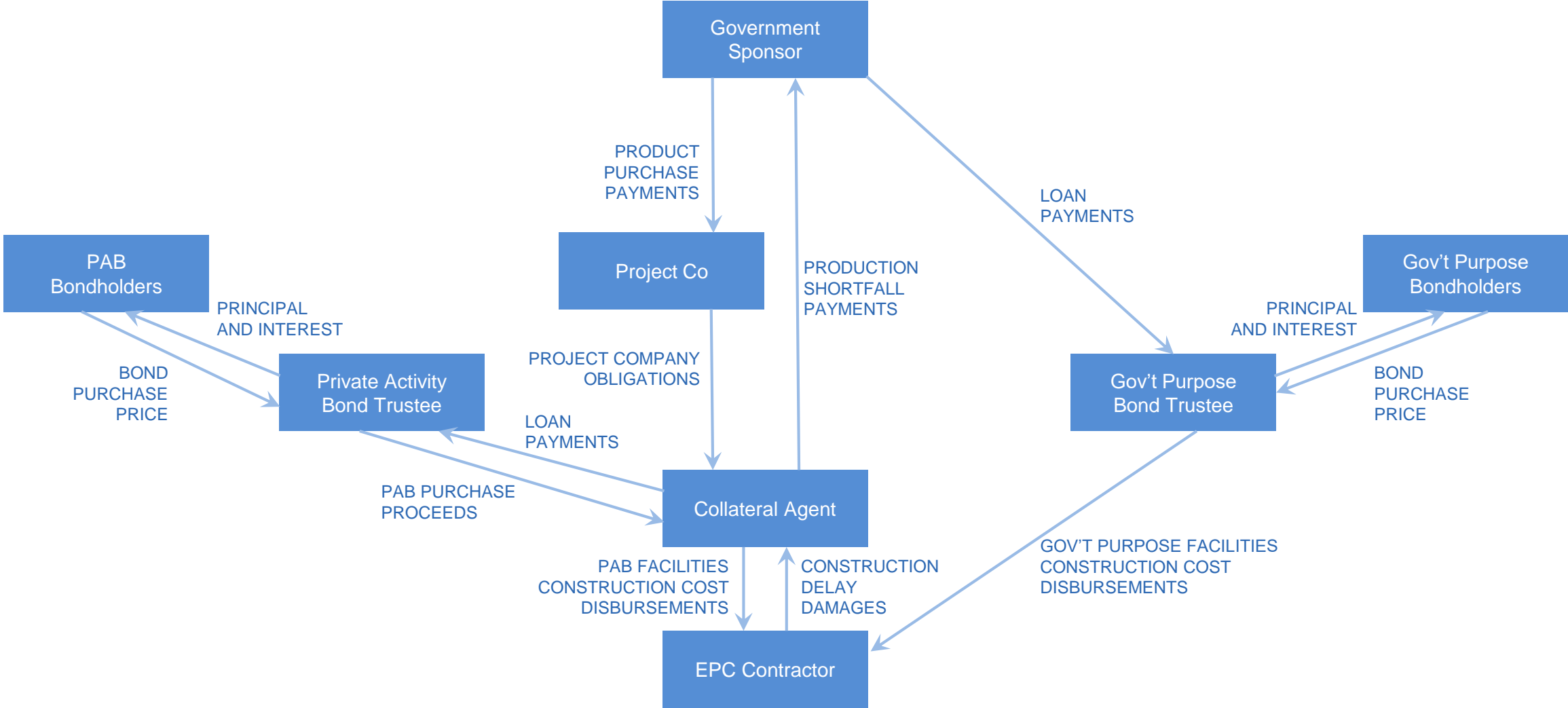
# P3s and Public Finance

- How do P3 transactions connect with public finance?
  - Existing Debt Portfolios:
    - Lien priority, flow of funds and other credit impacts
    - Additional debt tests; rate and other covenants
    - Change in use of existing financed projects
  - Proper disclosure remains an important consideration
  - Private activity bonds (e.g., surface transportation, water furnishing, sewer systems, airports and seaports), governmental bonds, taxable bonds

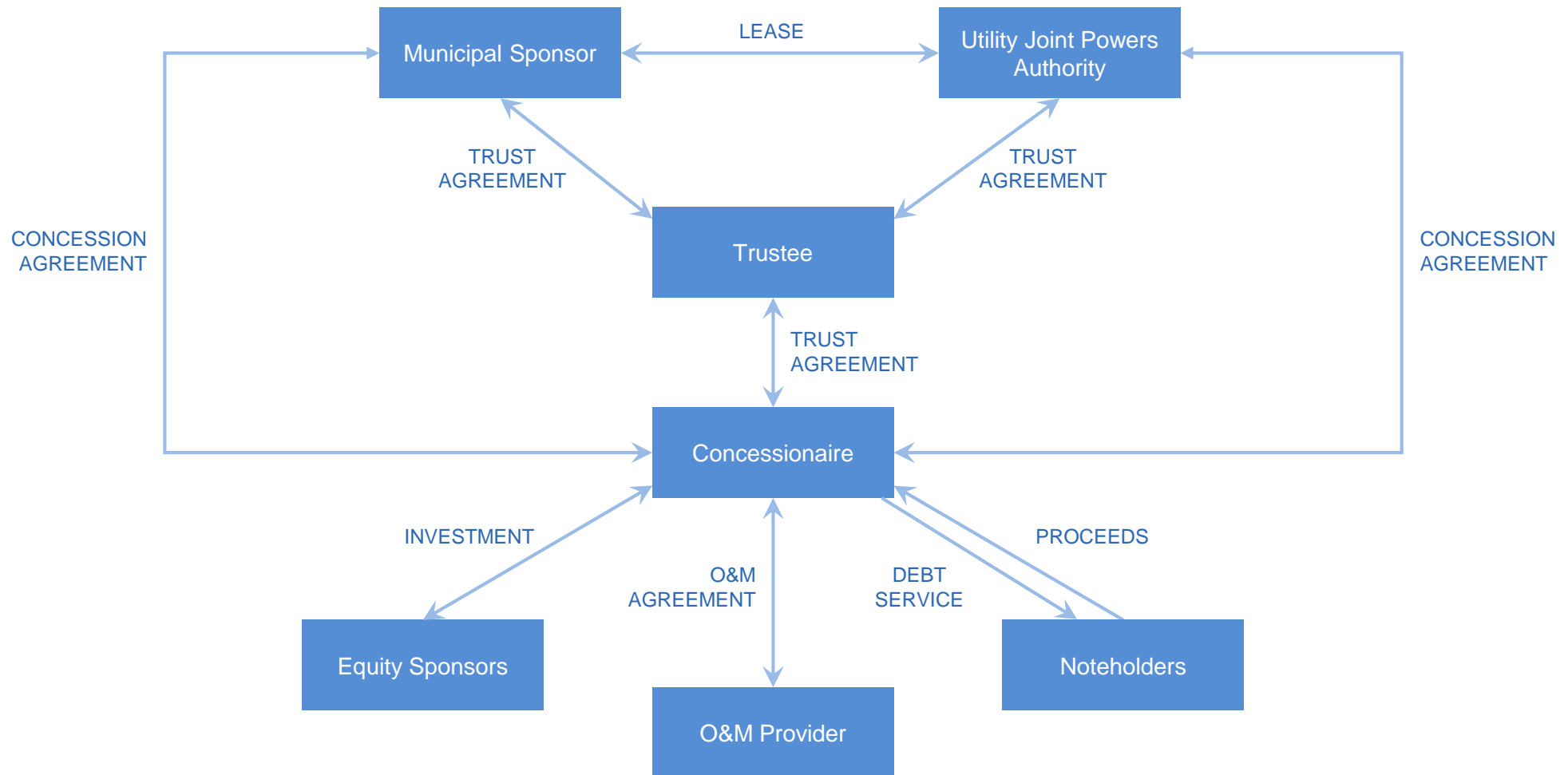
# P3 Non-Profit Tax-Exempt Financing Example



# P3/Conduit Revenue Bond Issuer Combined Facilities Financing Example



# Utility Enterprise Concession Example





# Summary and General Observations

- Risk allocations are much of the focus
  - All debt financing implicates payment risk, but P3 transactions also apportion design, engineering, construction, operational and calamity risks
  - Contracts can be elaborate and detailed, however, certain risks may resist allocation (*e.g.*, legal risks relating to rate setting or eminent domain)
- Funding remains critical—but P3s may provide flexibility in funding sources (operating vs. capital budgets, lien priority, debt limits, highly-rated offtaker)
  - Funding or takeout financing sources may include federal grants and low interest federal loans (*e.g.*, TIFIA, WIFIA, RRIF)



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